

OCT 21 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EDGARDO GRACIA CARRILLO,

Defendant - Appellant.

No. 04-50461

D.C. No. CR-04-00338-DT-01

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Dickran M. Tevrizian, District Judge, Presiding

Submitted October 11, 2005^{**}

Before: T.G. NELSON, WARDLAW, and TALLMAN, Circuit Judges.

Edgardo Gracia Carrillo appeals the 60-month sentence imposed after he pled guilty to unlawful re-entry following deportation, in violation of 8 U.S.C. §§ 1326(a) & (b)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291, and we

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

remand.

Because Gracia Carrillo was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we would normally remand to the district court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional *Booker* error).

Because, in this case, the sentencing judge is no longer available, we vacate the sentence and remand for the district court to proceed pursuant to *Ameline*. *See United States v. Sanders*, 421 F.3d 1044, 1051-52 (9th Cir. 2005).

SENTENCE VACATED and REMANDED.